

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6370 of 1999
with

Special Civil Application Nos.6371 & 6372 of 1999.

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and
MR.JUSTICE A.M.KAPADIA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT ELECTROMELT LTD

Versus

UNION OF INDIA

Appearance:

Mr. K.S.Nanavati with Mr. Trivedi for NANAVATI ASSOCIATES
for Petitioners
MR MUKESH R SHAH for Respondent No. 1
MR ASIM J PANDYA for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE A.M.KAPADIA

Date of decision: 08/09/1999

ORAL COMMON JUDGEMENT (Per B.C.Patel, J.):

1. Rule. Mr. Asim Pandya, learned advocate waives service of rule. At the request of the learned advocates for the parties, the petitions are taken up for final

disposal today.

2. For three different periods, three different show cause notices were issued which were culminated into the order at Annexure 'C' whereby the Assistant Commissioner, Division II, Central Excise, Mehsana, confirmed the demand of Rs.15,55,554/- raised vide show cause notice mentioned in the order and imposed a penalty of Rs.15,55,554/- under third proviso to sub-Rule 3 of Rules 96 ZO of the Central Excise Rules, 1944. The Assistant Commissioner also assessed the assessee to pay interest at the rate of 18% on the amount outstanding for the period from due date till the actual payment of the sum as confirmed under Section 96 ZO (3) of the Act. The said order was challenged by three different appeals and stay applications were also preferred. The Commissioner (Appeals), Central Excise and Customs, Ahmedabad, vide Annexure 'E', directed the appellants to pre-deposit Rs.15,55,554/- towards duty amount by 25.8.1999 and proof thereof by 31.8.1999. So far as the amount of penalty is concerned, the same has been waived till disposal of the appeals. It is against this order passed by the Commissioner (Appeals), Central Excise & Customs, Ahmedabad, the present petitions are preferred.

3. The applicant in the stay applications pointed out that the Registrar for the Board for Industrial and Financial Reconstruction, Government of India, New Delhi, addressed a letter dated 22.1.1998 to the Commercial Manager of the applicant company in which it was stated that the company's reference was received on 8.12.1997 which stood registered as Case No. 9/98.

4. In para 15 of the application, it is stated that the applicant unit is a sick unit before the BIFR and that in view of the applicant's meagre source of finance it is very difficult to pay such huge amount. Thus, it is very clear that the provisions contained in the Sick Industrial Companies (Special Provisions) Act, 1985 are applicable. Mr.Trivedi, learned advocate appearing for the applicant, submitted that the Apex Court in the case of Real Value Appliances Limited v. Canara Bank and others, 1998, Vol. 93 Company Cases, page 26 (SC) considered the provisions contained in Sections 15, 16 and 22 of the Act. The Apex Court pointed out as under:

" It is to be noticed that according to section 22, in case an "inquiry under section 16" is pending, then notwithstanding anything in the Companies Act, or any other instrument, etc., no proceedings for the winding up of the company or

for execution or distress or the like against the property of the company or for the appointment of a receiver and no suit for recovery of money or enforcement of any security or of any guarantee shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, by the appellate authority. Section 22A permits the Board to pass certain conditional orders."

In view of the fact that the applicant unit is a sick unit that aspect ought to have been taken into consideration.

5. The Apex Court in the case of Sangfroid Remedies Limited v. Union of India, 1998 (103) ELT 5 (SC), has held as under:

"....Further, there is one other factor in this case and that is the appellant has since been declared as a sick industry by an order dated 23rd April, 1998 by the Board for Industrial and Financial Reconstruction.

In these circumstances, we are of the view that directing the appellant to pay the excise duty as determined as a condition for hearing the appeal, is not sustainable."

6. In this view of the matter, the order passed by the Commissioner on the stay applications in so far as it relates to pre-deposit is required to be quashed and accordingly it is quashed. It is further directed that the appeals shall be heard and disposed of without insisting for pre-deposit.

7. In goes without saying that there shall be no coercive process for recovery of the amount. Mr. Pandya, learned advocate for the revenue, submitted that it is open for the revenue to approach the BIFR for sanction to recover the amount. As the law permits, it would be open for the revenue to approach the BIFR for such sanction.

8. Petitions stand allowed and Rule is made absolute accordingly. There shall be no order as to costs.

(karan)